

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 20th day of February, two thousand thirteen.

PRESENT: RAYMOND J. LOHIER, JR.,
SUSAN L. CARNEY,
Circuit Judges,
J. PAUL OETKEN,*
District Judge.

ZACHARY BROWN,
Plaintiff-Appellant,

v.

No. 12-589-cv

CITY OF NEW YORK, and in their individual
capacities, RHONDA JOHNSON, CATHY NONAS,
and LYNN SILVER,
Defendants-Appellees.

FOR APPELLANT: AARON DAVID FRISHBERG, New York, NY.

* The Honorable J. Paul Oetken, of the United States District Court for the Southern District of New York, sitting by designation.

1 FOR APPELLEES: DIANA LAWLESS (Larry A. Sonnenshein, *on the brief*),
2 for Michael A. Cardozo, Corporation Counsel of the
3 City of New York, New York, NY.
4

5 Appeal from a judgment of the United States District Court for the Southern
6 District of New York (P. Kevin Castel, *Judge*).

7 UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED,
8 AND DECREED that the judgment of the District Court is AFFIRMED.

9 Zachary Brown, who was fired by the New York City Department of Health and
10 Mental Hygiene, brought this employment discrimination action against the City of New
11 York, and his former supervisors (collectively, “the City”), alleging discrimination on the
12 basis of race, age, and gender in violation of Title VII of the Civil Rights Act of 1964, 42
13 U.S.C. § 2000e *et seq.*; the Age Discrimination in Employment Act, 29 U.S.C. § 621 *et*
14 *seq.*; 42 U.S.C. §§ 1981, 1983; the New York State Human Rights Law, N.Y. Exec. Law
15 § 290 *et seq.*; and the New York City Human Rights Law, N.Y.C. Admin. Code § 8–101
16 *et seq.* Brown is an African-American man and is over 40 years old. The District Court
17 granted the City’s summary judgment motion after concluding that the City had offered a
18 legitimate, non-discriminatory reason for Brown’s firing, namely, that Brown had raised
19 his voice and directed profanity at his immediate supervisor during an altercation, and
20 that Brown had not pointed to evidence sufficient to raise a disputed issue of material fact
21 on the question of whether the City’s proffered reason was pretextual. We assume the
22 parties’ familiarity with the facts and record of the prior proceedings, which we refer to
23 only as necessary to explain our decision to affirm.

24 Our review of the District Court’s grant of summary judgment is *de novo*, and we
25 construe the evidence in the light most favorable to the non-moving party, drawing all
26 inferences and resolving all ambiguities in his favor. Gorzynski v. JetBlue Airways
27 Corp., 596 F.3d 93, 101 (2d Cir. 2010). We conclude for substantially the same reasons
28 stated by the District Court in its Memorandum and Order dated November 30, 2011 that
29 the City was entitled to summary judgment.

1 We have considered all of Brown's other arguments and conclude that they are
2 without merit. For the foregoing reasons, the judgment of the District Court is
3 AFFIRMED.

4 FOR THE COURT:
5 Catherine O'Hagan Wolfe, Clerk of Court
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